IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4532 OF 2007.
IN
FIRST APPEAL NO.2194 OF 2007.

Jitendra Ghananshamdas Thakur & Anr. ...Applicants

Versus

Mrs Ramila Ravindra Tumma & Ors. ...Respondents

Ms Maya Sadhawani for the Applicants.
Shri Abhay Patki for the Respondents.

CORAM : ABHAY S.OKA, J.
DATED : 17th December, 2007.

P.C.:

1. Heard learned advocate appearing for the applicant and the learned advocate appearing for the respondent Nos.1 to 5 (original claimants).

2. The challenge in the appeal is to a judgment and award passed by the Motor Accident Claims Tribunal by which compensation of Rs.3,07,000/- together with interest thereon at the rate of 6% per annum has been awarded to the respondent Nos.1 to 5. The first respondent is the widow of the deceased (who was the victim of the accident). The second and third respondents are minor children of the deceased. The original fourth respondent is the father of the deceased and the fifth respondent is mother of the deceased.

3. A submission of the advocate for the applicant is that the vehicle owned by the applicant was not

involved in the accident and though there was evidence on record, the said aspect has not been considered by the Tribunal. The second submission is that the income of the deceased taken for calculating the multiplicand could not have been taken as the learned Member of the Tribunal has recorded that for some period the deceased was suspended from employment.

4. I have carefully considered the submissions and perused the impugned judgment. In so far as the first plea is concerned, the Tribunal has held that the said plea cannot be accepted and there is evidence on record to show the involvement of the vehicle insured by the applicants. In so far as second submission is concerned, it is true that Tribunal has observed that the deceased was suspended for some period. However, there is no finding recorded that the suspension of the deceased continued. It must be also stated that multiplier of 15 applied by the Tribunal prima facie appears to be on the higher side.

5. Considering the facts and circumstances of the case, though the applicants cannot be called upon to deposit entire amount due and payable as per the impugned award, the applicants will have to deposit a substantial amount. The claimants will have to be permitted to withdraw a part of the amount.

6. Hence, I pass the following order:

(i) There will be interim relief in terms of prayer clause (a) subject to the applicants depositing a sum of Rs.02,50,000/- with the Tribunal within a period of 12 weeks from today. If the amount is not deposited within the stipulated time, the stay granted will stand vacated without further reference to the Court.

(ii) If the amount is deposited, the Tribunal will permit the first claimant to withdraw a sum of Rs.50,000/- without security. The Tribunal will permit 5th claimant to withdraw a sum of Rs.30,000/- without security.

(iii) The balance amount shall be invested in fixed deposit. The first applicant will be entitled to withdraw the interest accrued on the fixed deposit amount till the 2nd and 3rd claimants or any of them attain majority.

(iv) After the 2nd and/or 3rd claimants attain majority, they will be entitled to apply to this Court for withdrawal of a reasonable amount.

(v) Civil Application is disposed of in above terms with no orders as to costs.

JUDGE